



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2005

Mr. C. Brian Cassidy
Locke Liddell & Sapp L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701

OR2005-00655

Dear Mr. Cassidy:

You ask whether certain information is subject to required public disclosure under the Public Information Act ("Act"), chapter 552 of the Government Code. Your request was assigned ID# 217367.

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received a request for nineteen categories of information relating to toll roads, specified contracts and agreements, a specified lease, and any reports filed with the commissioners courts of Travis and Williamson counties as required by a specified section of the Transportation Code. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have only submitted information responsive to items three and five of the request for our review. As you have not submitted the other requested information for our review and have not indicated that you wish to withhold any such information from disclosure, we assume you have released it to the extent that it existed on the date the

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

authority received this request. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you state that a portion of the requested information is the same information that was the subject of a previous ruling from this office. In Open Records Letter No. 2004-6945 (2004), we concluded that the authority was allowed to withhold information pertaining to US 183-A under section 552.104 of the Government Code. The authority asserts that the facts and circumstances surrounding our previous ruling has not changed. Thus, to the extent that the present request seeks information we have previously ruled, the authority may continue to comply with our prior ruling in regards to this information. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria for previous determination regarding cases when requested information is precisely the same information as was addressed in prior attorney general ruling).

Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. This section is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information pertaining to such negotiations that is excepted from disclosure under section 552.105 may be withheld from disclosure so long as the transaction relating to the information is not complete. *See* Open Records Decision No. 310 (1982). A governmental body may withhold information pursuant to section 552.105 "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Thus, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990).

In this instance, you state that the authority has made a good faith determination that the information you seek to withhold in Exhibit B pertains to the appraisal or purchase price of real property that the authority intends to purchase. Further, you explain that the release of this information may harm the authority's negotiating position. Based on your representations and our review of the information at issue, we conclude that the authority

may withhold the information you seek to withhold in Exhibit B pursuant to section 552.105 of the Government Code.²

We now address your arguments for the submitted information in Exhibit A. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency,” and encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981).

In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Furthermore, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

You state that the submitted information in Exhibit A consists of a preliminary draft of a policymaking document prepared by a consultant on behalf of the authority. You state that the draft memorandum contains the consultant’s “advice, opinion, and recommendations regarding the feasibility of using the Traffic and Revenue Study figures in establishing final Toll Policies to be adopted by the [authority.]” Based on your representations and our review, we agree that the submitted information in Exhibit A is excepted from disclosure under section 552.111 and may be withheld on that basis.

² As our ruling on this information is dispositive, we do not address your other arguments with regards to this information.

In summary, to the extent that the present request seeks information we have previously ruled, the authority may comply with our prior ruling in regards to this information. The authority may withhold the information it seeks to withhold in Exhibit B pursuant to section 552.105 of the Government Code. The information in Exhibit A may be withheld under section 552.111 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 217367

Enc. Submitted documents

c: Mr. Sal Costello
10300 Dalea Vista Court
Austin, Texas 78738
(w/o enclosures)